



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

Michael B. Toner, Esq.  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006

MAR 18 2011

RE: MUR 5926  
Republican Party of Minnesota and  
David E. Sturrock, in his official  
capacity as treasurer

Dear Mr. Toner:

Based on a complaint filed with the Federal Election Commission ("the Commission") on July 16, 2007, information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and information supplied by your clients, the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer ("the Committee"), the Commission, on December 2, 2008, found that there was reason to believe the Committee violated 2 U.S.C. §§ 434(b), 441b(a), and 441a(f), and 11 C.F.R. §§ 102.5(a) and 106.7(f), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated, and the execution of an appropriate tolling agreement will be required. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

You may also request an oral hearing before the Commission. See Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919 (Nov. 19, 2007) and Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted. If your clients' request is granted they will be required to toll the statute of limitations. See 72 Fed. Reg. at 64920.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Kasey Morgenheiter, the attorney assigned to this matter, at (202) 694-1525.

Sincerely,

  
Christopher Hughsey  
Acting General Counsel

Enclosure  
Brief

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
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Republican Party of Minnesota, and ) MUR 5926  
David E. Sturrock, in his official )  
capacity as treasurer )  
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**GENERAL COUNSEL'S BRIEF**

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**I. STATEMENT OF THE CASE**

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This matter was generated by a complaint filed by Citizens for Responsibility and Ethics  
in Washington ("CREW"), Melanie Sloan, and Diane Gerth, and pursuant to information  
ascertained by the Federal Election Commission ("Commission") in the normal course of  
carrying out its supervisory responsibilities. The complaint alleged that the Republican Party of  
Minnesota ("RPM" or "the Committee") violated the Federal Election Campaign Act of 1971, as  
amended ("the Act"), and Commission regulations by failing to disclose debts and obligations of  
\$100,000 or more from approximately May 2006 to at least February 2007, by withholding  
employees' retirement account funds and not immediately depositing them in employees'  
accounts, and by failing to report unreimbursed staff advances as contributions and outstanding  
debts during the same approximate time period.

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The complaint's allegations were based on a confidential memorandum written by former  
RPM finance director Dwight Tostenson that was subsequently published in a press article in the  
*Minneapolis-St. Paul Star Tribune* ("Tostenson Memorandum"). The article reported that  
Tostenson drafted a memorandum to the RPM State Executive Committee on February 15, 2007,  
alleging that RPM understated its debts by \$100,000 or more, and significantly delayed payment

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1 of staff expense reports. Dan Browning and Pat Doyle, "Internal Complaints Roil State GOP  
2 Office," *Minneapolis-St. Paul Star Tribune* (June 2, 2007) (Complaint Exhibit A). The  
3 Tostenson Memorandum stated that beginning in May 2006, Tostenson reported to the Chairman  
4 of RPM that the Committee was violating federal campaign finance law and provided the  
5 Committee Chairman with a list of suspected illegal activities. Complaint Exhibit B at 1-2. The  
6 Tostenson Memorandum also alleged that RPM misappropriated employees' retirement account  
7 funds. He claimed the funds were withheld from employee payroll checks but not immediately  
8 deposited into employee accounts. *Id.* at 1. Tostenson alleged that as much as \$12,000 was not  
9 deposited at any one time and that some delays in payment exceeded five months. *Id.* at 2. From  
10 February 20-26, 2007, only days after Tostenson reportedly gave his memorandum to the RPM  
11 Executive Board, RPM filed amendments to 51 monthly reports that it had originally filed with  
12 the Commission from 2002 through 2006.

13 In addition, the Commission's Reports Analysis Division ("RAD") referred RPM to the  
14 Office of General Counsel for apparent excessive transfers of non-federal funds to its federal  
15 account for allocated administrative expenses that may have resulted in impermissible transfers  
16 of contributions composed of federally non-compliant funds to the Committee's federal account.  
17 RPM disclosed the apparent excessive transfers on the Committee's Amended 2006 12-Day  
18 Pre-General, 2006 30-Day Post-General, and 2006 Year-End Reports.

19 The Commission merged these matters and found reason to believe that: (1) the  
20 Republican Party of Minnesota and Anthony G. Sutton, in his official capacity as treasurer,  
21 violated 2 U.S.C. § 434(b); and (2) the Republican Party of Minnesota and Anthony G. Sutton, in  
22 his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f), and 11 C.F.R.

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1 §§ 102.5(a) and 106.7(f).<sup>1</sup> See Factual and Legal Analysis for RPM. The Commission also  
2 authorized an audit of the allegations in the complaint and the RAD referral pursuant to 2 U.S.C.  
3 § 437g(2). The Committee did not deny any of the allegations in response to the complaint or  
4 the notification of the Commission's reason-to-believe findings.

5 The Audit Division's targeted audit of RPM found that:

- 6 • RPM did not report outstanding debts to vendors totaling over \$900,000 in 2006. See  
7 2 U.S.C. § 434(b).
- 8 • RPM did not timely forward approximately \$7,000 in withheld funds to employees'  
9 retirement accounts and did not report the unpaid benefits as debt. See 2 U.S.C.  
10 § 434(b).
- 11 • RPM made over \$500,000 in excessive transfers from its non-federal account to its  
12 federal account for allocated administrative expenses. See 2 U.S.C. § 441a(f) and  
13 11 C.F.R. §§ 102.5(a) and 106.7(f).

14 These findings and their bases were set forth in a Memorandum with attachments from the Audit  
15 Division to the Office of General Counsel dated April 9, 2010 ("Audit Memorandum"). We  
16 provided these materials to RPM on September 1, 2010.

17 Based on the complaint, the RAD referral, and the results of the audit, none of which  
18 RPM has disputed, the General Counsel is prepared to recommend that the Commission find  
19 probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his  
20 official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f), and 11 C.F.R. §§ 102.5(a)  
21 and 106.7(f).

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<sup>1</sup> Anthony G. Sutton was RPM's treasurer at the time of the Commission's reason to believe findings. David E. Sturrock is the current treasurer of the Committee and is accordingly named in his official capacity in the recommendations contained in this Brief.

1 **II. STATEMENT OF THE FACTS AND LEGAL ANALYSIS**

2 **A. Failure to Disclose Vendor Debts**

3 Section 434(b)(8) of the Act requires committees to disclose the nature and amount of  
4 outstanding debts and obligations in their reports. These debts and obligations must be  
5 continuously reported until they are extinguished. 11 C.F.R. § 104.11(a). Debts of \$500 or less  
6 must be reported no later than 60 days after the obligation is incurred, while debts of more than  
7 \$500 must be reported as of the date the obligation is incurred. 11 C.F.R. § 104.11(b).

8 In May 2008, the Committee filed amendments to its 2006 disclosure reports, disclosing  
9 previously unreported vendor debts of \$441,452.<sup>2</sup> The audit confirmed that the amended reports  
10 disclosed \$441,452 in previously unreported debts, but also revealed that RPM did not disclose  
11 an additional \$552,867 in debts owed during calendar year 2006. See Attachments 1 and 2.

12 As part of its audit, the Audit Division requested documentation from RPM for ten of its  
13 largest vendors in order to analyze RPM's disbursements for 2006. RPM, however, was only  
14 able to submit vendor documentation for eight of the vendors, representing only 41% of the  
15 Committee's disbursements in 2006. In reconciling the documentation pertaining to only these  
16 eight vendors, the Audit Division determined that RPM had additional undisclosed debts totaling  
17 \$552,867 to four of them, bringing the known debts that RPM failed to timely report in 2006 to  
18 \$994,319. See Audit Memorandum at 5. RPM should have reported some portion of these  
19 additional debts in eight of the twelve reporting periods during 2006, including in the

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<sup>2</sup> The Committee filed amendments to all twelve of its 2006 disclosure reports: the 2006 February Monthly Report, the 2006 March Monthly Report, the 2006 April Monthly Report, the 2006 May Monthly Report, the 2006 June Monthly Report, the 2006 July Monthly Report, the 2006 August Monthly Report, the 2006 September Monthly Report, the 2006 October Monthly Report, the 2006 12-Day Pre-General Report, the 2006 30-Day Post-General Report, and the 2006 Year-End Report.

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1 Pre-General Report, an election-sensitive report. Sixty-five percent of the debts arose during the  
2 last three reporting periods of the year, and should have been disclosed in RPM's 2006 original  
3 Pre-General, Post-General, and Year-End Reports. *Id.* While RPM amended its 2006 reports to  
4 disclose previously unreported vendor debts of \$441,452 in 2008, it has never amended its  
5 reports to reflect the additional undisclosed debts of \$552,867 revealed by the audit.

6 Accordingly, the General Counsel is prepared to recommend that the Commission find  
7 probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his  
8 official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose at least  
9 \$994,319 in outstanding debt to vendors during 2006.

10 **B. Failure to Timely Forward Withheld Funds to Employees' Retirement Accounts**  
11 **and Failure to Report Unreimbursed Staff Advances as Contributions and**  
12 **Outstanding Debts**  
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14 The complaint alleged that RPM had misappropriated employees' retirement account  
15 funds, based on the Tostenson Memorandum. According to that Memorandum, the funds were  
16 withheld from employee payroll checks but not immediately deposited into employee accounts.  
17 Complaint Exhibit B at 1. It alleged that some delays in payment exceeded five months. *Id.* at 2.

18 Section 104.11(b) of the Commission's regulations provides that regularly recurring  
19 administrative expenses will be treated as debt when payment is due. If a committee does not  
20 pay an employee for services rendered to the committee in accordance with an employment  
21 contract or a formal or informal agreement to do so, the unpaid amount may be treated as debt  
22 owed by the committee to the employee, or the employee can sign a written agreement to convert  
23 his or her status to a volunteer. 11 C.F.R. § 100.74. If the unpaid amount is treated as debt, the  
24 committee must continue to report the debt in accordance with 11 C.F.R. §§ 104.3(d) and 104.11  
25 until the debt is extinguished, until the Commission has completed a review of a debt settlement

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1 plan pursuant to 11 C.F.R. § 116.7(f), or until the employee agrees to become a volunteer,  
2 whichever occurs first. 11 C.F.R. § 116.6. Thus, failure to report the unpaid benefits as debt  
3 without either a debt settlement plan or a volunteer services agreement is a violation of 2 U.S.C.  
4 § 434(b).

5 The audit confirmed that RPM did not timely forward withheld retirement funds for the  
6 first five months of 2006. The Audit Division analyzed RPM's 2006 payroll documents and  
7 identified four employees who contributed to their individual retirement accounts through bi-  
8 weekly payroll deduction. RPM was responsible for collecting the payroll deductions, promptly  
9 issuing checks in the amount of the withheld funds, and forwarding them to Ameriprise Financial  
10 Services ("AFS"), the vendor that maintained RPM employees' retirement accounts. RPM's  
11 payroll documentation indicates that between January 15, 2006 and May 31, 2006, or ten pay  
12 periods, RPM withheld retirement contributions totaling \$7,623 from the four employees.  
13 During this time period, RPM did not make any payments to AFS. RPM made two "catch up"  
14 payments to AFS totaling \$12,243, on June 6 (\$1,340) and June 16, 2006 (\$10,903). Since the  
15 total of the payments to AFS exceeded the employee withholdings for January to May 2006 by  
16 \$4,620, it appears that these payments contained retirement funds withheld prior to 2006 that had  
17 not been forwarded. Beginning June 30, 2006, all funds withheld by RPM were forwarded on a  
18 monthly basis. Audit Memorandum at 3-4.

19 Since RPM has not provided any employee volunteer agreements, nor claimed any  
20 existed, and none of the other circumstances described in 11 C.F.R. § 116.6 occurred, RPM was  
21 required to treat and disclose the withheld retirement account funds as debt, but failed to do so,  
22 in violation of 2 U.S.C. § 434(b). Accordingly, the General Counsel is prepared to recommend  
23 that the Commission find probable cause to believe that the Republican Party of Minnesota and

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1 David E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to  
2 report at least \$7,623 in withheld employee retirement contributions as debt.

3 The complaint also alleged that RPM failed to report unreimbursed staff advances as  
4 contributions and outstanding debts in violation of the Act. This allegation was based on the  
5 Tostenson Memorandum that claimed that RPM significantly delayed payment of staff expense  
6 reports. Complaint Exhibit B at 2. RPM did not deny this allegation in response to the  
7 complaint or the Commission's reason to believe findings.

8 The payment by an individual from his or her personal funds, including a personal credit  
9 card, for the costs incurred by or on behalf of, a candidate or political committee is a contribution  
10 unless the payment is exempted from the definition of contribution under 11 C.F.R. § 100.79.  
11 11 C.F.R. § 116.5. Specifically, if the payment is not exempted under 11 C.F.R. § 100.79, it  
12 shall be considered a contribution by the individual unless the individual is reimbursed within  
13 sixty days after the closing date of the billing statement on which the charges first appear if the  
14 payment was made using a personal credit card, or within thirty days after the expense was  
15 incurred if a personal credit card was not used. 11 C.F.R. § 116.5(b)(2). A committee must treat  
16 the obligation arising from the payment described above as an outstanding debt until reimbursed  
17 (see 11 C.F.R. § 116.5(c)), and the debt is therefore subject to the reporting requirements of  
18 2 U.S.C. § 434(b).

19 After the Commission's reason to believe findings, the Audit Division requested that  
20 RPM provide disbursement documentation, including employees' requests for reimbursements,  
21 vendor receipts, and reimbursement authorizations. Counsel for RPM stated that the company  
22 responsible for RPM's disbursement records accidentally destroyed them and that it was  
23 impossible to recover them. RPM provided an affidavit from the president of Talent PayMaster,

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1 Inc. that stated that the company had lost or inadvertently destroyed RPM's invoices and other  
2 documents from 2005 and 2006.

3 RPM's original disclosure reports filed with the Commission for May 2006 through  
4 February 2007, the time period of the alleged violations, show that RPM disclosed only one debt,  
5 a loan from Alliance Bank that ranged in value from approximately \$130,000 to \$170,000.

6 Although the 51 amended reports RPM filed in February 2007 showed some shifting of reporting  
7 of employee reimbursements from the Schedule H4 (Disbursements for Allocated Federal/Non-  
8 Federal Activity) to Schedule B (Itemized Disbursements), they disclosed no additional debts.

9 The amended reports RPM filed in May 2008 did not disclose any debt related to delayed  
10 repayment of expenses incurred by RPM staff beyond the timeframes allowed by the regulations.

11 Although the amount of the unreimbursed staff advances is unknown, the Tostenson  
12 Memorandum is evidence of the violation and the violation has not been disputed by the  
13 Committee. Accordingly, the General Counsel is prepared to recommend that the Commission  
14 find probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in  
15 his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report unreimbursed  
16 staff advances as contributions and outstanding debts.

17 **C. Excessive Non-Federal Transfers for Allocated Administrative Expenses**

18 The Act provides that no person shall make contributions to a state party committee's  
19 federal account in any calendar year which in the aggregate exceed \$10,000, and prohibits the  
20 state party committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a) and (f).  
21 However, under Minnesota campaign finance law, there is no contribution limit for individuals  
22 giving to political parties. See Minnesota Statute Chapter 10A, Section 27.

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1           Where a committee has established both a federal and a non-federal account, only funds  
2   subject to the limitations and prohibitions of the Act shall be deposited into the separate federal  
3   account. 11 C.F.R. § 102.5(a)(1)(i). A state party committee may transfer funds from its non-  
4   federal account to its federal account solely to meet allocable expenses, such as administrative  
5   costs that are not directly attributable to a clearly identified federal candidate. 11 C.F.R.  
6   § 106.7(f). Under this provision, the committee must pay the entire amount of an allocable  
7   expense from its federal account and transfer funds from its non-federal account to the federal  
8   account solely to cover the non-federal share of that allocable expense. 11 C.F.R.  
9   § 106.7(f)(1)(i). The committee must transfer funds from the non-federal to the federal account  
10   to meet allocable expenses no more than 10 days before and no more than 60 days after the  
11   payments for which they are designated are made from the federal account. 11 C.F.R.  
12   § 106.7(f)(2)(i). Any portion of a transfer from a committee's non-federal account to its federal  
13   account that does not meet these timing requirements is presumed to be a loan or a contribution  
14   from the non-federal account to the federal account, in violation of the Act. 11 C.F.R.  
15   § 106.7(f)(2)(ii).

16           The Audit Division analyzed the Committee's disclosure reports, bank statements, and  
17   general ledger for the 2006 election cycle. According to RPM's Schedules H4 (Shared  
18   Federal/Non-Federal Activity), RPM incurred \$2,736,692 in administrative expenses during the  
19   2006 election cycle. The federal share of these expenses totaled \$574,342 and the non-federal  
20   share totaled \$2,162,350. However, during this same time period, RPM made 51 transfers from  
21   its non-federal account to its federal account totaling \$2,723,202 and reported these transfers on  
22   Schedules H3 (Transfers from Non-Federal Accounts for Allocated Federal/Non-Federal

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1 Activity), resulting in excessive transfers from RPM's non-federal account in the amount of  
2 \$560,852. Audit Memorandum at 4.

3 A review of RPM's 2006 state disclosure reports filed with the Minnesota Campaign  
4 Finance and Public Disclosure Board showed that RPM's state account accepted contributions  
5 from individuals in amounts larger than \$10,000. Available at <http://www.cfboard.state.mn.us/>.

6 In transferring excess non-federal funds into its federal account, the Committee has transferred  
7 non-federal funds containing contributions in amounts above the yearly limit for individual  
8 contributions to a state party committee's federal account. See 2 U.S.C. § 441a(f); Minnesota  
9 Statute Chapter 10A, Section 27. RPM has not refuted this finding and has not transferred non-  
10 federal funds from its federal account back to its non-federal account. Accordingly, the General  
11 Counsel is prepared to recommend that the Commission find probable cause to believe that the  
12 Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer,  
13 violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f) by making \$560,852 in  
14 excessive transfers from its non-federal account.

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**III. CONCLUSION**

Based on the foregoing, this Office is prepared to recommend that the Commission find probable cause to believe that the Republican Party of Minnesota and David E. Sturrock, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose debts to vendors, failing to report withheld employee retirement funds as debt, and failing to report unreimbursed staff advances as contributions and outstanding debts, and 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.7(f) by making excessive transfers from its non-federal account.

March 18, 2011  
Date

Christopher Hughey  
Christopher Hughey  
Acting General Counsel

Susan L. Lebeaux  
Susan L. Lebeaux  
Acting Deputy Associate General Counsel  
for Enforcement

Mark Allen  
Mark Allen  
Assistant General Counsel

Kasey S. Morgenheim  
Kasey Morgenheim  
Attorney

**Attachments:**

1. Amended Debt Totals Chart
2. Unreported Vendor Debt Chart

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